

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD A. HAMBLIN and DEPARTMENT OF THE AIR FORCE,
ALASKA AIR NATIONAL GUARD, Anchorage, Alas.

*Docket No. 97-1101; Submitted on the Record;
Issued April 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established more than an 11 percent employment-related monaural hearing loss for which he received a schedule award.

On December 28, 1990 appellant, a 54-year-old aircraft mechanic general foreman, filed a notice of occupational disease and claim, alleging that he sustained bilateral hearing loss which he first became aware was causally related to factors of his federal employment on September 20, 1978. Appellant retired on December 31, 1990. On March 25, 1996 appellant filed a claim for a schedule award in relation to his hearing loss.

The employing establishment submitted a copy of appellant's medical records, including audiograms taken during appellant's employment.

The Office of Workers' Compensation Programs referred appellant to Dr. David D. Beal, a Board-certified otolaryngologist, for an examination, including audiometric testing. In a report dated October 18, 1991, Dr. Beal discussed appellant's work history and provided findings from an audiogram conducted on September 4, 1991 with equipment that was last calibrated to standards in June 1991. He reported that the audiogram revealed gradual sensorineural hearing loss bilaterally with excellent speech discrimination. Dr. Beal indicated that the testing for the right ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 10, 15, 35 and 40, respectively, while testing for the left ear revealed decibel losses of 10, 15, 40 and 65, respectively. Dr. Beal concluded that appellant had a 1.3 percent binaural hearing loss under the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment*.

The Office referred Dr. Beal's report and the case record to an Office medical adviser for review. The medical adviser added the hearing loss figures for both ears at the 4 measured frequencies and then divided the sum by 4 to calculate that appellant had an average hearing loss of 25 decibels in the right ear and 32.5 decibels in the left ear. After deducting the 25 decibel fence from each average and multiplying the resulting figures by 1.5, he concluded that appellant had a 0 percent hearing loss in the right ear and an 11.25 percent hearing loss in the left ear.

In a decision dated April 9, 1996, the Office issued appellant a schedule award for an 11 percent loss of use of his left ear for a total of 5.72 weeks of compensation for the period September 4 to October 14, 1991. In a decision dated October 1, 1996 and finalized on October 2, 1996, an Office hearing representative affirmed the Office's April 9, 1996 decision.¹

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

Section 8107(c) of the Federal Employees' Compensation Act² specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁴

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.⁵ The Board has concurred in the Office's adoption of this standard for evaluation hearing loss for schedule award purposes.⁶

In the present case, an Office medical adviser reviewed the result from audiometric testing conducted by Dr. Beal on September 4, 1991. However, a review of the record reveals that appellant also submitted audiometric testing conducted by Dr. Beal on March 13, 1996. Dr. Beal noted that testing of the right ear at 500, 1,000, 2,000 and 3,000 cycles per second showed decibel losses of 15, 20, 45 and 60, respectively, while testing for the left ear revealed decibel losses of 15, 20, 55 and 65, respectively. Dr. Beal concluded that testing revealed a

¹ By decision dated April 9, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review of the prior decisions. Since appellant appealed the Office's earlier merit decisions in his schedule award claim in a letter docketed January 14, 1997 and, therefore, the Board had jurisdiction in this case effective that date, the Board finds that the Office did not have jurisdiction to issue the April 9, 1997 decision and, therefore, it is null and void; see *Douglas E. Bilings*, 41 ECAB 880 (1990).

² 5 U.S.C. §§ 8101-8193, § 8107(c).

³ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁵ p. 166 (3d ed. 1987).

⁶ See *Goings*, *supra* note 3.

bilateral hearing handicap of 35 percent. This evidence was submitted March 27 and April 4, 1996, and the Office did not address the March 13, 1996, audiogram or Dr. Beal's report dated March 18, 1996, in either its April 9 or October 2, 1996 merit decisions addressing appellant's partial permanent impairment due to hearing loss.

With respect to the weight to be accorded an opinion by an Office medical adviser, the Board has stated:

"The medical staff member of the [Office] not having examined the employee, can do no more than state his medical opinion, based upon the evidence of record, at the same time evaluating the evidence in light of his knowledge of medical science. The value of such opinion depends on the extent to which it covers all of the material evidence.... To the extent that the medical opinion omits material parts of the evidence it loses probative force."⁷

In this case, the Office did not address the March 1996 report, by Dr. Beal which is material to the determination of the degree of appellant's hearing loss. As the Office has not provided an explanation for why it selected the October 1991 report, by Dr. Beal over the March 1996 report,⁸ the case must be remanded to the Office to enable it to have the reports reviewed by an Office medical adviser and for an explanation of the weight accorded the various reports by Dr. Beal. Following such further development as the Office deems necessary, it shall issue a *de novo* decision on the merits.

⁷ *Andrew Galardi*, 2 ECAB 149 at 152 (1949); see *Melvina Jackson*, 38 ECAB 443 (1987).

⁸ *Joshua A. Holmes*, 42 ECAB 231 (1990).

The decisions of the Office of Workers' Compensation Programs dated October 2 and April 9, 1996 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
April 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member